



November 6, 2001

Mr. Edward W. Dunbar
General Counsel for El Paso Community College
Dunbar, Armendariz, Crowley & Hegeman
4726 Transmountain Drive
El Paso, Texas 79924

OR2001-5112

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154445.

The El Paso Community College (the "college") received a request for "[t]he names of the finalists for the EPCC presidency recommended by the committee assisting the college's board of trustees with the presidential search." You state that you have released the names of three finalists to the requestor. You claim that the name of a fourth individual is excepted from disclosure under section 552.123 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.123 excepts from required public disclosure the "name of an applicant for the position of chief executive officer of an institution of higher education ... except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person."

The college is an institution of higher education. *See, e.g.,* Educ. Code §61.003. You explain that, as part of the selection process for the new college president, the board of trustees of the college established a committee to evaluate the candidates and recommend those individuals it felt should be finalists. You indicate that this committee recommended four individuals for consideration as finalists, but that one of the candidates voluntarily withdrew from consideration prior to the board of trustee's selection of the finalists. Further,

you state that you have released the names of the three individuals ultimately selected as finalists by the board of trustees. Based on your representations, we agree that the name of the fourth individual is excepted from disclosure under section 552.123 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 154445

Enc: Submitted documents

c: Ms. Tammy Fonce-Olivas
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(w/o enclosures)